

# BOARD OF PESTICIDES CONTROL

**January 14, 2005**

Colby/Thomas Room, Hampton Inn  
425 Kennedy Memorial Drive, Waterville

## AGENDA/MINUTES

**9:30 A.M.**

Chair Carol Eckert called the meeting to order at 9:33 A.M. Other members in attendance included Berry, Bradstreet, Humphreys, Jemison, Simonds and Walton.

1. Introductions of Board and Staff

☒ The members and staff introduced themselves.

2. Minutes of the December 17, 2004 Board Meeting

Action Needed: Amend and/or Approve

☒ Berry/Simonds: Motion made and seconded to approve the minutes as distributed

In Favor: Unanimous

3. DeAngelo Brothers, Inc. Request for Variance for Railroad Vegetation Management Program

The Board's drift regulations allow applicators to seek a variance from any standards they feel are unreasonable for their type of operation. This firm has recently acquired a contract to conduct railroad vegetation control activities on the ballast area of the tracks for the Eastern Maine Railway. They are seeking a variance so they do not have to record all sensitive areas within 500 feet of the tracks. Instead, they propose taking other precautions that include having a spotter running ahead of the spray rig and maintaining a 10-foot buffer from all open water. The staff will recommend that the permit also be conditioned on the longstanding provision that the company provides public notification through newspaper advertisements.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/Deny the variance request.

☒ Batteese pointed out this variance request contained most of the longstanding provisions of past requests including the ten-foot buffer to water bodies. Eckert asked if any of the members wished to review the ten-foot buffer and Jemison indicated he would be more interested if they were using products containing active ingredients other than glyphosate. Jennings reminded the members that they had determined it would be more appropriate to

address buffers under Chapter 29 rather than Chapter 22. Jackson reported that she was still waiting for laboratory results from this past summer's monitoring and that her survey of other states to determine their buffer policies had not been entirely fruitful. Simonds indicated he would like to get away from variances and have decisions based on risks.

Simonds/Berry: Motion made and seconded to approve the variance with the condition that the company provide public notification through newspaper advertisements.

In Favor: Unanimous

4. Review of Proposed Amendments to Chapters 27, 31 and 60

At their annual planning session in May, the members reviewed the need to update several chapters of the Board's regulations. The staff explained that many housekeeping revisions were needed to either incorporate various policies that the Board had adopted over the past few years or provide clarification on several other provisions. In addition, the Board decided their top priority for discretionary tasks was to amend Chapter 60 to exclude a single person or family from being eligible to seek a critical pesticide control area. There was general agreement that the staff should bring recommended changes to the Board's attention as time permits. The staff has now prepared amendments and is recommending that the Board initiate rule-making with a single public hearing on all three chapters.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and determination if the Board is ready to initiate rule-making with a public hearing on any or all of the proposed chapters.

- ☒ Batteese walked the members through his memo of January 5<sup>th</sup> describing all the proposed changes. The members were satisfied with the new language in all three chapters but noted that they should be thinking about some alternate protections that could be implemented if Chapter 60 is amended to exclude a single person or family. Some possibilities mentioned included waiving the fee for the pesticide notification registry, instituting a requirement for applicators to follow BMPs when making treatments near sensitive individuals and requiring realtors to provide notification about nearby applications when selling properties.

Berry/Bradstreet: Motion made and seconded to initiate rule-making with a public hearing on the three regulations to be held at the start of the March meeting.

In Favor: Unanimous

5 Department of Environmental Protection Request for Board Support in Developing Proposed Legislation to Create a Surcharge on Certain Pesticide Products to Fund Removal of Hazardous Chemicals from Schools

The Department of Environmental Protection (DEP) has been developing a bill to establish a hazardous waste and pesticide cleanout program for Maine's schools. It is currently considering a thirty-cent per container surcharge on certain non-agricultural and non-bulk containers of pesticides that would be assessed at the distributor level. The fee would be deposited into the Maine Solid Waste Management Fund and would be used to cover the entire cost of removing all types of hazardous materials from schools. A similar bill that would have placed a surcharge on paints and pesticides was considered last year but amended to remove the imposition of fees that could be considered a tax. DEP is seeking both the Board's assistance in defining the products that would be subject to the surcharge and also its support of the potential legislation. The Board's staff will point out several concerns with this proposal.

Presentation By: David P. Littell and Robert I. Batteese, Jr.  
Deputy Commissioner, DEP Director, BPC

Action Needed: Discussion and determination if the Board has any recommendations on the proposed legislation that could still be submitted as a DEP Department bill.

- ☒ Batteese advised that DEP had requested the matter be tabled because Governor Baldacci had not had time to take a position on the proposed legislation. Eckert stated she had been receiving several questions about the Board's position and noted there was a fair amount of support for the bill in the environmental community. She also noted the Medical Advisory Committee could utilize additional data that might be generated on the amounts of homeowner pesticides sold in the state. However, she did not believe it was fair to base the funding on pesticide sales since they do not represent the bulk of chemicals removed from schools. Humphreys spotted Greg Gholson, EPA Region I, in the audience and asked him if there was any hope for additional funding from his agency. Gholson replied that EPA is expecting flat funding for the coming years and he could not offer any hope of being able to increase its grant to the state. Simonds stated that the bill directly threatens the Board's future revenues so he could not support the proposed funding mechanism. Eckert observed that the Board should not take a formal position until after hearing from the agency at the next meeting. She inquired if there was consensus to table the matter until the February meeting, and hearing no objections, asked the members to move on to other old or new business.

6. Other Old or New Business

a. 2004 Pesticide Products Registration Summary – W. Smith

- ☒ Smith reviewed his memo of December 2004 and noted that the number of registered products had increased by 6.1%. He also reported revenues for the fiscal year had exceeded expenditures by \$17,000. In response to a question from Simonds, he concluded the increased registrations were a sign the economy was

improving and anticipated the number of registrations for 2005 should be equally as good as the previous year.

b. Legislative Update – R. Batteese

- ☒ Batteese called the member's attention to the list of pre-cloture requests filed by legislators and promised to send copies of the bills as soon as they were printed. He also noted there were several bills related to disposal of hazardous chemicals, the protection of children and public notification of pesticide applications. Walton expressed concern that there would be increasing interest in using pesticides to control invasive species and indicated he wanted to make sure the Board was involved with these decisions.

c. Other ????

- ☒ Batteese reminded the members the comment period to receive constructive comments on proposed Chapter 26 would close on January 21<sup>st</sup>. There was consensus that the members would like to spend the first hour of the next meeting in a workshop session to review the comments received.

7. Schedule and Location of Future Meetings

- a. The Board has tentatively scheduled the next meeting for Friday, February 18, 2005.

- ☒ The Board scheduled the next meeting for Friday, February 18, 2005 in the Waterville area.

- b. Location and date for the following meeting.

- ☒ The Board tentatively scheduled the following meeting for Friday, March 18<sup>th</sup> in the Augusta area.

8. Adjourn

- ☒ A motion to adjourn was accepted at 11:36 A.M.

Robert I. Batteese, Jr.  
Director